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9-119.100 Forfeiture-related Approval/Consultation Requirements -- Administrative Forfeiture 60-Day Notice Waiver

In all administrative forfeitures, the notice under 19 U.S.C. § 1607 to possessors, owners, and other interested parties, including lienholders, known at the time of seizure, shall occur no later than 60 days from the date of seizure. For parties whose identity is determined after seizure, the written notice shall occur within 60 days after such determination. Waivers of this 60-day rule may be obtained in writing in exceptional circumstances from a designated official within the seizing agency. *See Asset Forfeiture Policy Manual* (1996), Chapter 2; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 45; and USAM 9-112.210.

9-119.102 Adoption Policy -- Approval/Consultation Procedure

If a Federal agency declines to adopt a seizure despite the recommendation of the United States Attorney, the agency must promptly document its reasons for declination in a memorandum and forward copies of the memorandum to the United States Attorney and the Asset Forfeiture and Money Laundering Section (AFMLS). AFMLS will resolve any disagreements and may authorize direct adoption of state or local seizures by United States Attorneys for judicial forfeiture in appropriate circumstances. *See Asset Forfeiture Policy Manual* (1996), Chapter 6; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 42; and USAM 9-116.170.

9-119.103 Assets Located in Foreign Countries -- Approval/Consultation Procedure

Assistant United States Attorneys shall consult with the Office of International Affairs (OIA) before filing a civil action based on 28 U.S.C. § 1355(b)(2). OIA and AFMLS will determine whether the foreign country where the assets are located can assist in the U.S. action. *See* USAM 9-13.526.

9-119.104 Attorney Fees -- Approval/Consultation Procedure

No criminal or civil forfeiture proceedings may be instituted to forfeit an asset transferred to an attorney as fees for legal services without the prior approval of the Assistant Attorney General, Criminal Division. Requests for approval to forfeit attorneys' fees should be made to the Asset Forfeiture and Money Laundering Section (AFMLS).

No formal or informal, written or oral agreements, including the exemption of certain assets to pay attorneys' fees restrained as substitute assets, may be made to exempt an asset transferred to an attorney as fees for legal services from forfeiture without the prior approval of the Assistant Attorney General, Criminal Division. All such requests for approval to exempt the attorneys' fees should be made to AFMLS. *See Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 15; *Asset Forfeiture Policy Manual* (1996), Chapter 9, section II; and USAM sections 9-119.202 and 9-119.203.

9-119.105 EAJA Attorneys' Fees and Costs Payment from the Assets Forfeiture Fund -- Approval/Consultation Procedure

Payment of costs and attorneys' fees from the Assets Forfeiture Fund to pay Equal Access to Justice (EAJA) awards arising from actions related to the forfeiture of property must be approved. Requests for approval to charge an EAJA award against the Fund or against Fund allocations must be submitted to the Asset Forfeiture

and Money Laundering Section (AFMLS). *See Asset Forfeiture Policy Manual* (1996), Chapter 7; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 48; and USAM 9-117.210.

9-119.106 Equitable Sharing -- Approval/Consultation Procedure

The Deputy Attorney General (or designee) must approve equitable sharing:

- in cases involving \$1 million or more in forfeited assets;
- in multi-district cases; and
- in cases involving real property transfers to a state or local agency for law enforcement related use.

The United States Attorney may approve equitable sharing in judicial cases involving less than \$1 million in forfeited assets (including transfer of personal property for official use.)

The seizing agency may approve equitable sharing in administrative cases involving less than \$1 million in forfeited assets (including transfer of property for official use.)

The Deputy Attorney General (or designee) must approve allocations from the Assets Forfeiture Fund to program participants for statutorily designated uses.

Personal approval of the United States Attorney is required for discontinuance of federal forfeiture action in favor of state proceedings.

See Attorney General's Guidelines on Seized and Forfeited Property; Asset Forfeiture Policy Manual (1996), Chapter 8; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 10; and USAM 9-118.000 *et seq.*

9-119.107 Equitable Sharing in International Cases -- Approval/Consultation Procedure

Commitments to share internationally in specific cases may only be made with the approval of the Attorney General and the Secretary of State. Prior commitments regarding sharing with foreign governments should be scrupulously avoided. The request to share internationally should be made to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Asset Forfeiture Policy Manual* (1996), Chapter 6; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tabs 11, 24; and USAM 9-116.400.

9-119.108 Exceptions to Cash Management Policy -- Approval/Consultation Procedure

The Department of Justice Cash Management Policy requires that all seized cash be deposited promptly into the Seized Asset Deposit Fund. Cash may be detained only when its retention serves an essential evidentiary purpose. The United States Attorney may approve this retention for amounts less than \$5,000. The Chief of the Asset Forfeiture and Money Laundering Section (AFMLS) may grant exceptions for amounts of \$5,000 or more in extraordinary circumstances. *See Asset Forfeiture Policy Manual* (1996), Chapter 1; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 33; and USAM 9-111.600.

9-119.109 Expedited Payment of Lienholders in Forfeiture Cases -- Approval/Consultation Procedure

The Asset Forfeiture and Money Laundering Section (AFMLS) must approve in writing any agreement to pay liens and mortgages to a lienholder prior to forfeiture under the Expedited Forfeiture Settlement Policy for Mortgage Holders. *See Asset Forfeiture Policy Manual* (1996), Chapter 3; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 44; and USAM 9-113.800.

9-119.110 Expedited Settlement -- Approval/Consultation Procedure

The United States Attorney shall within 10 working days report the denial of a request for expedited settlement made by a financial institution (as defined in 31 U.S.C. § 5312) in real property cases to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Expedited Forfeiture Settlement and Policy for Mortgagees and Lienholders*, revised October 1993; *Asset Forfeiture Policy Manual* (1996), Chapter 9, Section I, at page 9-4.

9-119.111 Forfeiture Appeals -- Approval/Consultation Procedure

Adverse decision memos in any forfeiture shall be sent to the Appellate Section, Criminal Division, with a copy to the Asset Forfeiture and Money Laundering Section (AFMLS).

9-119.112 In Forma Pauperis Petitions -- Approval/Consultation Procedure

In cases where the seizing agency believes there are clear and articulable reasons for denial of an In Forma Pauperis petition, the request for waiver shall be referred to the Asset Forfeiture and Money Laundering Section (AFMLS) for final determination. *See Asset Forfeiture Policy Manual* (1996), Chapter 2; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 28; and USAM 9-112.220.

9-119.113 Judicial Forfeiture of Property that is Administratively Forfeitable -- Approval/Consultation Procedure

The Asset Forfeiture and Money Laundering Section (AFMLS) must approve judicial forfeiture of property that would otherwise be forfeited administratively in cases that are *not* covered by the exception for aggregation of seized property or the exception for compelling prosecutorial considerations. *See Asset Forfeiture Policy Manual* (1996), Chapter 2; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 28; and USAM 9-112.110.

9-119.114 Official Use of Personal Property -- Approval/Consultation Procedure

The seizing agency head (or designee) may approve placement of personal property into the agency's own official use or that of another participating agency, but the Chief, Asset Forfeiture and Money Laundering Section (AFMLS), must approve the decision if liens on the property equal \$25,000 or one-third of the value, whichever is greater.

The U.S. Marshals Service must approve the placement of personal property into official use by non-participating federal agencies, but the Chief, AFMLS, must approve the decision if:

- the property is \$25,000 or more in value; or
- liens on property equal or exceed \$25,000 or one third of the value, whichever is greater.

See The Attorney General's Guidelines on Seized and Forfeited Property, Asset Forfeiture Policy Manual (1996), Chapter 8; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 10; and USAM 9-118.400.

9-119.115 Official Use of Real Property -- Approval/Consultation Procedure

The Attorney General must approve the placement of real property into official use by any federal agency. *See The Attorney General's Guidelines on Seized and Forfeited Property, Asset Forfeiture Policy Manual (1996), Chapter 8; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 10; and USAM 9-118.400.*

9-119.116 Seizure/Restraint of Ongoing Business -- Approval/Consultation Procedure

The Money Laundering guidelines require that Assistant United States Attorneys consult with AFMLS before seeking forfeiture of an ongoing business on a money laundering facilitation theory. *See USAM 9-105.330.*

9-119.117 Settlement Authority (Attorney General Order 1598-92) -- Approval/Consultation Procedure

Consultation with the Asset Forfeiture and Money Laundering Section (AFMLS) is required regarding a proposed settlement if a civil or criminal forfeiture claim is more than \$500,000, unless the original claim is between \$500,000 and \$5 million, and the difference between the original claim and the settlement amount does not exceed 15 percent of the original claim.

United States Attorneys have authority to independently settle civil or criminal forfeiture cases:

- involving amounts not exceeding \$500,000; and
- involving amounts between \$500,000 and \$5 million when the settlement releases not more than 15 percent of the original claim.

The Deputy Attorney General's approval is required for a settlement in which the difference between the original claim and the proposed settlement exceeds \$2 million or 15 percent of the original claim, whichever is greater. *See Asset Forfeiture Policy Manual (1996), Chapter 3; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 40; and USAM 9-113.200.*

9-119.118 Settlements -- Unsecured Partial Payments -- Approval/Consultation Procedure

Settlements should not provide for unsecured partial payments except with the approval of AFMLS in consultation with the U.S. Marshals Service. *See Asset Forfeiture Policy Manual (1996), Chapter 3; Asset Forfeiture Manual, Volume III, Policy Compendium - tab 55; and USAM 9-113.107.*

9-119.119 Temporary Restraining Orders Pre-Indictment -- Approval/Consultation Procedure

Prior approval of the Asset Forfeiture and Money Laundering Section (AFMLS) is required to seek a pre-indictment ex parte application for a temporary restraining order in criminal forfeiture cases. (Organized

Crime and Racketeering Section independently exercises authority to review restraining orders and seek the views of AFMLS.) *See Asset Forfeiture Policy Manual* (1996), Chapter 2; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 7; and USAM 9-112.240.

9-119.120 Warranting Title -- Approval/Consultation Procedure

Approval must be sought from the Seized Assets Division, Marshals Service, to convey title through a general warranty deed or its equivalent. *See Asset Forfeiture Policy Manual* (1996), Chapter 5; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 34; and USAM 9-115.421.

9-119.121 Weed and Seed Initiative -- Approval/Consultation Procedure

The Deputy Attorney General (or designee) must approve transfer of real property to a state or local agency for further transfer to other government agencies or non-profit agencies for use in the Weed and Seed Program. Requests should be submitted to the Asset Forfeiture and Money Laundering Section (AFMLS). *See Asset Forfeiture Policy Manual* (1996), Chapter 6; *Asset Forfeiture Manual, Volume III, Policy Compendium* - tab 38; and USAM 9-116.520.

9-119.200 Policy Limitations on Application of Forfeiture Provisions to Attorney Fees

While there are no constitutional or statutory prohibitions to application of the third party forfeiture provisions to attorneys fees, the Department recognizes that attorneys, who among all third parties uniquely may be aware of the possibility of forfeiture, may not be able to meet the statutory requirements for relief for third party transferees without hampering their ability to represent their clients. In particular, requiring an attorney to bear the burden of proving lack of reasonable cause to believe that an asset was subject to forfeiture may prevent the free and open exchange of information between an attorney and a client. The Department recognizes that the proper exercise of prosecutorial discretion dictates that this be taken into consideration in applying the third party forfeiture provisions to attorney fees. *See the Criminal Resource Manual* at 2301 through 2303. Accordingly, it is the policy of the Department that application of the forfeiture provisions to attorney fees be carefully reviewed and that they be uniformly and fairly applied.

9-119.202 Division Approval

No civil or criminal forfeiture proceedings may be instituted to forfeit an asset transferred to an attorney as fees for legal services without the prior approval of the Assistant Attorney General, Criminal Division, pursuant to the guidelines set out in the Criminal Resource Manual:

Attorney Fee Forfeiture Guidelines	Criminal Resource Manual at 2304
Forfeiture of Assets Transferred to an Attorney in a Fraudulent or Sham Transaction	Criminal Resource Manual at 2305
Forfeiture of Assets Transferred to an Attorney for Representation in a Civil Matter	Criminal Resource Manual at 2306
Forfeiture of Assets Transferred to an Attorney for Representation in a Criminal Matter	Criminal Resource Manual at 2307
Discussion of Actual Knowledge and/or Reasonable Cause	Criminal Resource Manual at 2308

to Know

At the Time of the Transfer	Criminal Resource Manual at 2309
Actual Knowledge of Forfeitability	Criminal Resource Manual at 2310
Knowledge that the Government has Asserted that a Particular Asset is Subject to Forfeiture	Criminal Resource Manual at 2311
Knowledge that the Asset in Fact is from Criminal Misconduct	Criminal Resource Manual at 2312
Reasonable Cause to Know that an Asset is Subject to Forfeiture	Criminal Resource Manual at 2313
Policy Concerning Issuance of Notification Letters to Attorneys	Criminal Resource Manual at 2314
Discovery of Information Concerning an Asset Transferred to an Attorney as Fees for Legal Services	Criminal Resource Manual at 2315
Compelled Disclosure of Confidential Communications During the Course of the Representation	Criminal Resource Manual at 2316
Subpoenas Issued to Attorneys to Obtain Fee Information	Criminal Resource Manual at 2317
Post-Judgment Discovery Proceedings Under the Criminal Forfeiture Statutes	Criminal Resource Manual at 2318

No formal or informal, written or oral, agreements may be made to exempt an asset transferred to an attorney as fees for legal services from forfeiture under any civil or criminal forfeiture statute without the prior approval of the Assistant Attorney General, Criminal Division. *See* USAM 9-119.203.

Requests for Criminal Division approval of, and questions regarding, the forfeiture of assets transferred to an attorney as fees for legal services or agreements to exempt such assets from forfeiture should be directed to the Asset Forfeiture and Money Laundering Section, Criminal Division, (202) 514-1263.

9-119.203 Agreements to Exempt from Forfeiture an Asset Transferred to an Attorney as Fees for Legal Services

Agreements may be entered into to exempt from forfeiture an asset transferred to an attorney as fees for legal services, but only with the prior approval of the Assistant Attorney General, Criminal Division. *See* USAM 9-119.202. Agreements may be approved only if: (1) there are reasonable grounds to believe that the particular asset is not subject to forfeiture; and (2) the asset is transferred in payment of legitimate fees for legal services actually rendered or to be rendered.

Efforts should be made to assist in identifying the assets, if any, belonging to a defendant which are not subject to forfeiture. In this regard, any proffer of evidence by an attorney as to the source of the assets may be relied upon. However, an agreement to exempt fees based on such a proffer must contain an express condition that the agreement is not binding if full and accurate disclosure has not been made or if the proffer is false or misleading.

In determining whether an asset is being transferred in payment of a legitimate fee, the amount of the fee may be taken into consideration. However, the focus should not be on whether the fee is reasonable. The focus must be on whether it is a legitimate transaction or a sham transaction designed to shield assets from forfeiture. If the transaction is legitimate, the fee, even if it appears exorbitant, may be exempted if it is paid from a source that meets the first requirement. Conversely, a fee, even if reasonable, may not be exempted from forfeiture by agreement if the first requirement is not met. Any agreement to exempt a fee from forfeiture, however, may be

limited to a specific amount if there is a basis to believe that only assets in that amount are not subject to forfeiture.

9-119.300 Food, Drug and Cosmetic Act Cases

The forfeiture policies contained in this chapter of the United States Attorneys' Manual (entitled "Forfeitures") do not apply to civil forfeiture cases brought pursuant to the Federal Food, Drug and Cosmetic Act (FD&C Act), 21 U.S.C. § 334. For information concerning the policies and procedures applicable to such cases, the Office of Consumer Litigation in the Civil Division should be contacted. USAM 4-1.206 However, civil and criminal forfeiture investigations conducted by Special Agents under 21 U.S.C. § 334 but which result in forfeiture cases under other statutes are governed by the forfeiture policies contained in this chapter of the United States Attorneys' Manual.

9-119.400 Money Laundering Prosecutions and Forfeitures

See USAM 9-105.000 et seq. for a discussion of the Department's policy concerning money laundering prosecutions and forfeitures.

9-119.500 FIRREA Memorandum of Understanding

See the Criminal Resource Manual at 2319 to 2320.

9-119.600 Memorandum of Understanding Regarding Money Laundering Investigations

See the Criminal Resource Manual at 2186.